

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

NEW CENTURY MORTGAGE CORP.,

Plaintiff,

v.

GREAT NORTHERN INSURANCE
COMPANY, FEDERAL INSURANCE
COMPANY,

Defendants.

)
) CASE NO. 05C2370
)
) Judge Coar
)
) **DECLARATION OF JAMES A.**
) **LOWE IN SUPPORT OF**
) **PLAINTIFF'S MOTION FOR**
) **SUMMARY JUDGMENT**
)
)
)

DECLARATION OF JAMES A. LOWE

I, JAMES A. LOWE, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and am an associate in the law firm of Gauntlett & Associates, counsel of record for New Century Mortgage Corp. ("NCMC").

2. As an attorney assigned to this case I have personal knowledge of the facts stated in this Affidavit and will competently testify thereto if called upon to do so.

3. Attached as **Exhibit "M"** to the concurrently filed Appendix of Exhibits ("AOE"), is a true and correct copy of New Century's June 30, 2004 letter to Chubb advising Chubb that it is obligated to fund the entire settlement and enclosing the attorney's fee and cost bills incurred by NCMC as of the letter's date.

4. Attached as **Exhibit "N"** to the concurrently filed AOE, is a true and correct copy of Chubb's July 7, 2004 letter, acknowledging that settlement for \$6 million or less is reasonable and prudent and disputing whether California law applies to NCMC's claim.

5. Attached as **Exhibit "O"** to the concurrently filed AOE, is a true and correct copy of Chubb's August 10, 2004 letter acknowledging a telephone conference between NCMC's in-house counsel and Chubb's adjuster placed by counsel during the August 6, 2004 mediation and acknowledging that Chubb again refused to participate in the funding of the settlement of the *Bernstein* Action.

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6. Attached as **Exhibit "P"** to the concurrently filed AOE, is a true and correct copy of NCMC's August 10, 2004 letter to Chubb reminding Chubb that all of the Courts addressing coverage for TCPA claims have found a duty of defense and/or indemnity, and that Chubb's self-serving letter of August 10, 2004, claiming that Chubb did not have enough information to evaluate its settlement duties was simply false.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 28th day of September, 2005, at Irvine, California.

s/James A. Lowe

JAMES A. LOWE